IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8741 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VISHAL EXPORTS OVERSEAS LTD

Versus

UNION OF INDIA

Appearance:
M/S TRIVEDI & GUPTA for Petitioners
MR AKSHAY H MEHTA for Respondent No. 1
MR MUKESH R SHAH for Respondent No. 2
NOTICE SERVED BY DS for Respondent No. 4

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE D.H.WAGHELA

Date of decision: 23/02/2000

ORAL JUDGEMENT (Per: B.C.Patel,J.)

1. Rule. Mr.Pandya, Ld. Advocate waives service of Rule.

2. We were taken through the affidavits and

affidavits-in-rejoinder filed by the petitioner and the respondents. It seems that, at the initial stage, there was some confusion in the mind of the learned advocate for the revenue regarding rapeseed and soyabean. It also appears that the action has been initiated on the basis of letters from the office of the Customs (Preventive) Ahmedabad. It is clear from the record that, at the instance of Kandla Customs, the petitioner was denied the benefit despite the fact that Kandla Customs was not concerned with soyabean meal. Nothing has been placed on record to indicate that Kandla Customs is inquiring pertaining to soyabean meal (goods exported under consignment for which inquiry is initiated). Under what provisions of law Kandla Customs directed not to grant benefit is a difficult question to answer by the learned advocate appearing for the revenue. We have seen some reports.

3. It is also brought to our notice that, the office of the Joint Director General of Foreign Trade, Bangalore, vide letter dated 3/8.11.99, had initiated action against the petitioner for a different licence but for same commodity. It is pointed out in the affidavit-in-reply that the said show-cause-notice has been dropped subsequently. Meaning thereby there was no substance in the contention urged by the officers to initiate action against the petitioner. We do not express our opinion in the instant case.

4. At this stage, we are directing the respondent No.3, The Joint Director General of Foreign Trade, Ahmedabad, to decide the question on the basis of a Circular dated 15.10.99, independently without being influenced by any other material and shall examine whatever has been produced before him. There is a Circular No.S/1999-2000 F.No.01/85/4014/AMOD/DES-VI dtd.15.10.99 issued by the Government of India, Ministry of Commerce, Director General of Foreign Trade, New Delhi at page 110 of the compilation on the basis of which authority has to decide the matter. It is required to be noted that the advance licences are issued in favour of the petitioner and since long the petitioner is making a demand and there is a denial by the respondents. If the licences expire before outcome or the transferability is withheld, the petitioner will suffer a great loss. It is required to be noted that if the unduly long time is taken then the licence would become only a piece of paper having no value. Therefore it is high time that on the ground of alleged fraud if the department wants to initiate inquiry for finding out the correctness of the allegation, it must decide the proceedings quickly so as

not to adversely affect the beneficiary and exporters may not suffer. There may be unscrupulous persons trying to take advantage.

5. We hope that respondent no.3 shall complete the inquiry and shall render a decision within a period of 15 days from the receipt of the writ. Learned counsel for the revenue requested for one month time which we do not think proper to grant. We have noted that Revenue is also taking a different stand. Earlier stage, Revenue insisted that the Kandla authority should be joined as a party and after impleading, it is stated that the Jt. Director General of Foreign Trade, Mumbai is a necessary party. The decision is to be taken by Jt. Director General of Foreign Trade, Ahmedabad, a party before the Court. If it is pointed out by that authority to extend the time, the Court will extend the same if cause is just and proper. Respondent No.3 is directed to decide as aforesaid.

6. In view of the aforesaid direction, this Special Civil Application stands allowed to the aforesaid extent. Rule made absolute to the aforesaid extent. No order as to costs.

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